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(d) *Stay*. A motion to dismiss stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion to dismiss.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

§ 134.212 Summary decision.

(a) *Grounds*. A party may move for summary decision at any time as to all or any portion of the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(b) *Contents of motion*. The motion must include a statement of the material facts believed not to be disputed, and relevant law. Supporting affidavits may also be included.

(c) *Cross-motions*. In its response to a motion for summary decision, a party may cross-move for summary decision. The initial moving party may serve and file a response to any cross-motion for summary decision within 20 days after the service of that cross-motion.

(d) *Stay*. A motion for summary decision stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion for summary decision.

§ 134.213 Discovery.

(a) *Motion*. A party may obtain discovery only upon motion, and for good cause shown.

(b) *Forms*. The forms of discovery which a Judge can order under paragraph (a) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(c) *Limitations*. Discovery may be limited in accordance with the terms of a protective order. Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(d) *Disputes*. If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may serve and file a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance,

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undue burden or expense, privilege, or confidentiality.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

§ 134.214 Subpoenas.

(a) *Availability*. At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring a witness to appear and testify, or to produce particular documents, at a specified time and place.

(b) *Requests*. A request for the issuance of a subpoena must be written, served upon all parties, and filed. The request must clearly identify the witness and any documents to be subpoenaed, and must set forth the relevance of the testimony or documents sought.

(c) *Service*. A subpoena may only be served by personal delivery. The individual making service shall prepare an affidavit stating the date, time, and place of the service. The party which obtained the subpoena must serve upon all other parties, and file with OHA, a copy of the subpoena and affidavit of service within 2 days after service is made.

(d) *Motion to quash*. A motion to limit or quash a subpoena must be served and filed within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be served and filed within 10 days after service of the motion, unless a shorter time is specified by the Judge. No oral argument will be heard on the motion unless the Judge directs otherwise.

§ 134.215 Interlocutory appeals.

(a) *General*. A motion for leave to take an interlocutory appeal from a Judge's ruling will not be entertained in those proceedings in which OHA issues final decisions. In all other cases, an interlocutory appeal will be permitted only if, upon motion by a party, or upon the Judge's own initiative, the Judge certifies that his or her ruling raises a question which is immediately appealable. Interlocutory appeals will be decided by the AA/OHA or a designee.

(b) *Motion for certification*. A party must serve and file a motion for certification no later than 20 days after

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issuance of the ruling to which the motion applies. A denial of the motion does not preclude objections to the ruling in any subsequent request for review of an initial decision.

(c) *Basis for certification.* The Judge will certify a ruling for interlocutory appeal only if he or she determines that:

(1) The ruling involves an important question of law or policy about which there is substantial ground for a difference of opinion; and

(2) An interlocutory appeal will materially expedite resolution of the case, or denial of an interlocutory appeal would cause undue hardship to a party.

(d) *Stay of proceedings.* A stay while an interlocutory appeal is pending will be at the discretion of the Judge.

§ 134.216 Alternative dispute resolution procedures.

At any time during the pendency of a case, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution procedures to assist in resolving the matter. If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution procedures.

§ 134.217 Settlement.

At any time during the pendency of a case, the parties may submit a settlement agreement, signed by all settling parties, to the Judge. Settlement negotiations, and rejected settlement agreements, are not admissible into evidence.

§ 134.218 Judges.

(a) *Assignment.* The AA/OHA will assign all cases subject to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, to an Administrative Law Judge. The AA/OHA will assign all other cases before OHA to either an Administrative Law Judge or an Administrative Judge, or, if the AA/OHA is a duly licensed attorney, to himself or herself.

(b) *Authority.* Except as otherwise limited by this part, or by statute or other regulation, a Judge has the authority to take all appropriate action to ensure the efficient, prompt, and

fair determination of a case, including, but not limited to, the authority to administer oaths and affirmations and to subpoena and examine witnesses.

(c) *Recusal.* Upon the motion of a party, or upon the Judge's own initiative, a Judge will promptly recuse himself or herself from further participation in a case whenever disqualification is appropriate due to conflict of interest, bias, or some other significant reason. A denial of a motion for recusal may be immediately appealed to the AA/OHA, or to the Administrative Law Judge if the AA/OHA is the Judge, but that appeal will not stay proceedings in the case.

§ 134.219 Sanctions.

A Judge may impose appropriate sanctions, except for fees, costs, or monetary penalties, which he or she deems necessary to serve the ends of justice, if a party or its attorney:

(a) Fails to comply with an order of the Judge;

(b) Fails to comply with the rules set forth in this part;

(c) Acts in bad faith or for purposes of delay or harassment;

(d) Submits false statements knowingly, recklessly, or with deliberate disregard for the truth; or

(e) Otherwise acts in an unethical or disruptive manner.

§ 134.220 Prohibition against ex parte communications.

No person shall consult or communicate with a Judge concerning any fact, question of law, or SBA policy relevant to the merits of a case before that Judge except on prior notice to all parties, and with the opportunity for all parties to participate. In the event of such prohibited consultation or communication, the Judge will disclose the occurrence in accordance with 5 U.S.C. 557(d)(1), and may impose such sanctions as he or she deems appropriate.

§ 134.221 Prehearing conferences.

Prior to a hearing, the Judge, at his or her own initiative, or upon the motion of any party, may direct the parties or their attorneys to appear, by telephone or in person, in order to consider any matter which may assist in